

SENATE BILL 3692
By Fowler

AN ACT to amend Tennessee Code Annotated, Title 9,
Chapter 4, Part 57 and Title 49, Chapter 2, Part 1,
relative to mental health testing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding the following language thereto:

Section 9-4-5701.

(a) Without the approval of the general assembly, a state agency may not use state or federal funds for the universal mental health testing or screening of juveniles under any federal mental health program.

(b) Subsection (a) does not apply to mental health testing or screening under the following conditions:

(1) If a juvenile's parents, guardian, or legal custodian, or a caregiver under title 34, chapter 6, part 3, consent to the mental health testing or screening;

(2) Federal law requires the mental health testing or screening;

(3) State law requires mental health testing or screening;

(4) A court requires the mental health testing or screening or the mental health testing or screening is required under a court order before this act takes effect;

(5) Contractual obligations that pre-date this act that require mental health testing or screening;

(6) Carrying out the normal biochemical testing of newly born children including but not limited to PKU, thyroid, or to diagnose physical conditions that are curable, controllable, or easily regulated if diagnosed soon after birth;

(7) Emergency testing or screening of an individual under title 33, chapter 6, part 4, or testing or screening done in connection with a disaster or epidemic;

(8) Testing or screening required by administrative rules and regulations promulgated pursuant to title 4, chapter 5; or

(9) Comprehensive health screening which includes mental health testing or screening with written, informed voluntary active consent of parents, guardian, or legal custodian, or a caregiver under title 34, chapter 6, part 3, for screening of juveniles.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 2, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 49-2-122.

(a) As used in this section, “psychotropic medication” means a substance that is:

(1) Used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and

(2) Intended to have an altering effect on perception, emotion, or behavior.

(b) Notwithstanding the provisions of any law to the contrary, a local education agency may not use a parent's refusal to consent to administration of a psychotropic medication to a student or to a psychiatric evaluation, screening, or examination of a student as grounds, by itself, for prohibiting the child from attending class or participating in a school-related activity or as a basis of child abuse or neglect. A person employed by a local education agency may not recommend that a student be evaluated for

treatment with any psychotropic medication or for a particular mental health diagnosis unless the person is a:

(1) Psychiatrist;

(2) Physician with expertise in psychiatry as determined by training, education, or experience;

(3) Advanced practice nurse with special certification in mental health or psychiatric nursing;

(4) Advanced practice nurse with expertise in mental health or psychiatric nursing as determined by training, education, or experience;

(5) Psychologist with health service provider designation; or

(6) Senior psychological examiner.

(c) The provisions of subsection (b) shall not be construed to:

(1) Prevent an appropriate referral under the child find system required under 20 U.S.C. Section 1412, as amended; or

(2) Prohibit a LEA employee from discussing any aspect of a child's behavior or academic progress with the child's parent or guardian or another school district employee.

(d) The governing board of each LEA shall adopt such policies as may be reasonable and necessary to ensure implementation and enforcement of this section.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. Sections 1 and 3 of this act shall take effect upon becoming a law, the public welfare requiring it. Section 2 shall take effect July 1, 2006, the public welfare requiring it.

